

2000

In the Matter of the Estate of Richard D. Snow, Deceased, and the Richard D. Snow Family Trust; Ruby Womack v. Marcia Snow : Reply Brief

Utah Supreme Court

Follow this and additional works at: https://digitalcommons.law.byu.edu/byu_sc2



Part of the [Law Commons](#)

Original Brief Submitted to the Utah Supreme Court; digitized by the Howard W. Hunter Law Library, J. Reuben Clark Law School, Brigham Young University, Provo, Utah; machine-generated OCR, may contain errors.

Robyn Row Walton; Del B. Rowe; Rowe and Walton; Counsel for Appellant.

Dennis M. Astill; Michael S. Lowe; Strong and Hanni; Counsel for Appellee.

Recommended Citation

Reply Brief, *Womack v. Snow*, No. 20000811.00 (Utah Supreme Court, 2000).

https://digitalcommons.law.byu.edu/byu_sc2/590

This Reply Brief is brought to you for free and open access by BYU Law Digital Commons. It has been accepted for inclusion in Utah Supreme Court Briefs by an authorized administrator of BYU Law Digital Commons. Policies regarding these Utah briefs are available at

http://digitalcommons.law.byu.edu/utah_court_briefs/policies.html. Please contact the Repository Manager at hunterlawlibrary@byu.edu with questions or feedback.

IN THE UTAH SUPREME COURT

IN THE MATTER OF THE ESTATE OF)	REPLY BRIEF OF
RICHARD D. SNOW, DECEASED, AND)	APPELLANT'
THE RICHARD D. SNOW FAMILY TRUST,)	
)	
RUBY WOMACK,)	
)	
Appellant,)	Supreme Court No.
)	20000811-SC
vs.)	
)	
MARCIA SNOW,)	
)	
Appellee.)	

Robyn Rowe Walton, #8261
Del B. Rowe, #2813
ROWE & WALTON, P.C.
915 South Main Street
Bountiful, Utah 84010
Counsel for Appellant

Dennis M. Astill
Michael S. Lowe
STRONG & HANNI
Sixth Floor Boston Building
9 Exchange Place
Salt Lake City, Utah 84111
Counsel for Appellee

FILED
UTAH SUPREME COURT

OCT 03 2001

PAT BARTHOLOMEW
CLERK OF THE COURT

IN THE UTAH SUPREME COURT

IN THE MATTER OF THE ESTATE OF)	REPLY BRIEF OF
RICHARD D. SNOW, DECEASED, AND)	APPELLANT
THE RICHARD D. SNOW FAMILY TRUST,)	
)	
RUBY WOMACK,)	
)	
Appellant,)	Supreme Court No.
)	20000811-SC
vs.)	
)	
MARCIA SNOW,)	
)	
Appellee.)	

Robyn Rowe Walton, #8261
Del B. Rowe, #2813
ROWE & WALTON, P.C.
915 South Main Street
Bountiful, Utah 84010
Counsel for Appellant

Dennis M. Astill
Michael S. Lowe
STRONG & HANNI
Sixth Floor Boston Building
9 Exchange Place
Salt Lake City, Utah 84111
Counsel for Appellee

TABLE OF CONTENTS

TABLE OF CONTENTS	i
TABLE OF AUTHORITIES	iii
REPLY	1
I. MS. SNOW WAS NOT ENTITLED TO THE \$5,000 EXEMPT PROPERTY CLAIM BECAUSE HER CLAIMS DO NOT CIRCUMVENT THE STATUTE OF LIMITATIONS AND BECAUSE THE TRIAL COURT ERRED IN GIVING NO VALUE TO THE PROPERTY RECEIVED BY MS. SNOW	1
A. MS. SNOW WAS "ENTITLED" TO THE EXEMPT PROPERTY ALLOWANCE ONLY IF THE CLAIM WAS MADE WITHIN THE TIME PERIOD PRESCRIBED BY LAW	1
B. THE TRIAL COURT DID NOT RELY ON MS. WOMACK'S ACCOUNTING IN DETERMINING THE VALUE OF ASSETS PASSING TO MS. SNOW, BUT RATHER ASSUMED THAT THE PROPERTY HAD NO VALUE WHEN MS. WOMACK'S INVENTORY STATED THE VALUE WAS UNKNOWN	8
II. DESPITE MS. SNOW'S CLAIMS, THE TRIAL COURT ERRED IN GRANTING MS. SNOW'S MOTION FOR PARTIAL SUMMARY JUDGMENT CONCERNING THE INTERPRETATION OF FIVE KEY PROVISIONS IN THE TRUST	9
A. BECAUSE THE TRUST AMENDMENT DISTRIBUTES ALL OF THE DECEDENT'S ESTATE TO MS. WOMACK, THE LIFE ESTATE MERGES WITH THE REMAINDER AND MS. SNOW SHOULD RECEIVE THE ESTATE IN FEE SIMPLE	10
B. THE WORD "INCOME" MUST BE READ IN CONTEXT AND A DETERMINATION OF THE DECEDENT'S INTENT IS ESSENTIAL IN RESOLVING ANY AMBIGUITY OVER THIS TERM	13

C.	MS. WOMACK'S EXCEPTIONALLY BROAD POWERS UNDER THE TRUST ENTITLED HER TO MOVE THE MOBILE HOME	17
D.	DESPITE MS. WOMACK'S BENEFICIAL INTEREST IN THE TRUST, SHE IS STILL ENTITLED TO ATTORNEY'S FEES FOR PERFORMING HER DUTIES AS TRUSTEE	18
E.	THE EXPRESS LANGUAGE OF THE TRUST, INCLUDING THE BROAD AUTHORITY GRANTED TO MS. WOMACK TO USE THE TRUST ASSETS IN HER COMPLETE DISCRETION, ALLOWED MS. WOMACK TO PAY-OFF THE ENCUMBRANCE ON THE DECEDENT'S VAN	19
III.	MS. SNOW'S ATTEMPTS TO EXPLAIN AWAY THE AMBIGUITIES FOUND IN THE TRUST AND AMENDMENT FAIL UNDER CLOSER ANALYSIS	20
	CONCLUSION	23

TABLE OF AUTHORITIES

CASES

<u>Estate of Ashton v. Ashton (Ashton I)</u>	
804 P.2d 540 (Utah Ct. App. 1990)	21
<u>Estate of Ashton v. Ashton (Ashton II)</u>	
898 P.2d 824 (Utah Ct. App. 1995)	17, 18
<u>In the Matter of the Estate of Hamilton</u>	
869 P.2d 971 (Utah Ct. App. 1994)	21
<u>Makoff v. Makoff</u>	
528 P.2d 797 (Utah 1974)	14, 15
<u>Parson v. Parson</u>	
56 Cal.Rptr.2d 686 (Cal. Ct. App. 1996)	2, 3, 4
<u>In Re the Estate of Edward W. Sharp</u>	
537 P.2d 1034 (Utah 1975)	2, 3, 4
<u>Wells Fargo Bank v. Superior Court</u>	
990 P.2d 591 (Cal. 2000)	19
<u>Winegar v. Froerer Corp.</u>	
813 P.2d 104 (Utah 1991)	14

STATUTES

Utah Code Ann. § 22-3-4(1)	13
Utah Code Ann. § 75-1-201(6)	1, 4, 6
Utah Code Ann. § 75-2-403	1, 9
Utah Code Ann. § 75-3-803	1, 2, 4, 5, 6, 7
Utah Code Ann. § 75-7-402	16

REPLY

- I. MS. SNOW WAS NOT ENTITLED TO THE \$5,000 EXEMPT PROPERTY CLAIM BECAUSE HER CLAIMS DO NOT CIRCUMVENT THE STATUTE OF LIMITATIONS AND BECAUSE THE TRIAL COURT ERRED IN GIVING NO VALUE TO THE PROPERTY RECEIVED BY MS. SNOW.
 - A. MS. SNOW WAS "ENTITLED" TO THE EXEMPT PROPERTY ALLOWANCE ONLY IF THE CLAIM WAS MADE WITHIN THE TIME PERIOD PRESCRIBED BY LAW.

Ms. Snow claims that under Utah Code Ann. § 75-2-403, an allowance for exempt property is a right or entitlement as opposed to a claim. In support of this, Ms. Snow points out that the right to exempt property takes "... priority over all claims" under the statute. (Appellee's Brief at 8). While an exempt property allowance may have priority, this does not mean that an exempt property allowance is not a claim. Rather, an exempt property allowance is a priority claim that is still subject to the statute of limitations found in Utah Code Ann. § 75-3-803.

Under Utah Code Ann. § 75-1-201(6), "claims" include "liabilities of the decedent whether arising in contract, in tort, or otherwise **and liabilities of the estate which arise at or after the death of the decedent.**" 'Claims' does not include estate or inheritance taxes, or demands or disputes regarding title of a decedent or protected person to

Under this broad definition of claims, an exempt property request is a liability of the estate which arises at the death of the decedent. An exempt property claim is not exempted from the statute and it is clearly a liability or obligation of the estate that arises upon the death of the decedent. Therefore, Ms. Snow's right to the exempt property allowance is a claim subject to the statute of limitations under section 75-3-803.

Attempting to support her argument, Ms. Snow mistakenly relies on In Re the Estate of Edward W. Sharp, 537 P.2d 1034 (Utah 1975). Ms. Snow notes that in Sharp, the Court ruled that an action for specific performance on a contract is not included in the definition of a claim. The Court looked at the term claim under a prior statute and found that a claim "... refers to debts or demands against the Decedent which might have been enforced in his lifetime, by personal actions for the recovery of money; and upon which only a money judgment could have been rendered." Id. at 1037.

Ms. Snow also cites the California case of Parson v. Parson, 56 Cal.Rptr.2d 686 (Cal. Ct. App. 1996) attempting to bolster her argument. There, the California Court of Appeals stated that "the obligation to pay a family

allowance is not a 'liability of the deceased settlor....' It is an obligation that arises only after death and after an appropriate order is made." Id. at 689.

Based on the above two cases, Ms. Snow states, "In the case at hand, the exempt property allowance petitioned for by Appellee is not a debt or demand against the Decedent which might have been enforced in his lifetime and therefore, Appellee's Petition for Exempt Property is not a claim against the estate. Thus, Appellant's application of section 75-3-803 is inappropriate." (Appellee's Brief at 9-10).

Ms. Snow's reasoning and reliance on the above cases is flawed. The Sharp case can easily be distinguished because it involved an action for specific performance and not an exempt property claim. In addition, the Court was interpreting the term "claim" under an entirely different statute. When the Court stated that a claim "refers to debts or demands against the Decedent which might have been enforced in his lifetime, by personal actions for the recovery of money; and upon which only a money judgment could have been rendered," they obviously were not referring to the law as it exists today.

Under current law, sections 75-3-803 and 75-1-201(6) both refer to claims which arise at or after the death of the decedent. This change in the law clearly makes any reliance on Sharp or the old statute inapplicable. Claims are not restricted to debts or demands which might have been enforced during the decedent's lifetime. Rather, because the new statutes refer to claims as liabilities of the estate arising at or after the death of the decedent, an exempt property claim arising at the death of the decedent is clearly within the statutory definition.

Ms. Snow's reliance on Parson v. Parson is also unfounded. Somehow attempting to bolster her claim, she cites the court's statement that "the obligation to pay a family allowance is not a 'liability of the deceased settlor....' It is an obligation that arises only after death and after an appropriate order is made." This statement is quite true, but it does not lend much support to Ms. Snow's position.

Ms. Womack is not arguing that the exempt property claim is a liability of the deceased settlor. Rather, Ms. Womack correctly points out that it is a liability of the estate arising at the death of the settlor. This clearly

complies with our statute and is consistent with the notion that an exempt property allowance is a claim under section 75-3-803 subject to the three month statute of limitations.

After arguing that section 75-3-803 does not apply, Ms. Snow also claims even if the statute applies, there is no three month time limitation applicable to this case. In making this argument, Ms. Snow states, "The only three month statute of limitations contained in section 75-3-803 is placed on creditors claims made against an estate which are '...based on a contract with the personal representative....'" Here, Ms. Snow is most likely referring to section 75-3-803(3)(a). She goes on to say, "The only other reference to a three month time limitation is a portion of the statute which refers to claims made by creditors made three months after the claims arise." Here, Ms. Snow is probably referring to section 75-3-803(3)(b).

In making these statements, Ms. Snow misstates the law by inserting the word "creditor" in front of claims in an attempt to get around the statute. Section 75-3-803(3) states, "All claims against a decedent's estate which arise at or after the death of the decedent...are barred against the estate, the personal representative, and the heirs and

devisees of the decedent, unless presented as follows: (b) **any** other claim within the later of three months after it arises..." No where in this section is the word "creditor" ever used. However, Ms. Snow conveniently inserts this word in front of claims attempting to get around the statute.

Ms. Womack does not assert that Ms. Snow is a creditor and she does not need to be a creditor to fall under this section. Rather, if Ms. Snow's petition for exempt property is a claim that arises at or after the death of the decedent, the statute of limitations applies. Because Ms. Snow's exempt property allowance is a claim under section 75-1-201(6), the three month limitation of section 75-3-803 prohibits Ms. Snow's untimely claim.

Ms. Snow states that if Ms. Womack's position were granted, heirs of an estate would be required to petition the estate for their inheritance within the limitations period. (Appellee's Brief at 11). This is not true. An inheritance is not the same as an exempt property allowance. The exempt property allowance was created by a specific statute and is meant to provide a way for a decedent's family to receive a certain amount of property by law before the estate is distributed and inheritances are paid.

Because of the statutory and technical nature of exempt property and the fact that it creates a liability for the estate that is separate from regular distribution, an exempt property allowance is a claim under Utah law.

Moreover, if Ms. Snow's position were granted, persons claiming an exempt property allowance could wait for any period of time before making such a claim. This is contrary to the specific requirements of section 75-3-803 and would frustrate the entire probate process. The purpose of section 75-3-803 is to wrap-up the probate of the estate in as timely a manner as possible.

Allowing family members to wait years before making an exempt property claim would create large problems in administering an estate. Section 75-3-803 provides for a three month period where these types of claims must be filed in order to proceed with the administration and closing of an estate. Permitting an exempt property claim years down the road would cause an unnecessary interruption in the process or a re-opening of the process for an indefinite period. This is not only illogical and burdensome, it is also contrary to law.

B. THE TRIAL COURT DID NOT RELY ON MS. WOMACK'S ACCOUNTING IN DETERMINING THE VALUE OF ASSETS PASSING TO MS. SNOW, BUT RATHER ASSUMED THAT THE PROPERTY HAD NO VALUE WHEN MS. WOMACK'S INVENTORY STATED THE VALUE WAS UNKNOWN.

Ms. Snow claims that "Appellant, as Personal Representative, supplied the Trial Court with an Inventory, sworn to be true and correct, under oath, that the personal effects of the Decedent had no value." (Appellee's Brief at 12). This is incorrect. Ms. Womack's Inventory stated that the value of the personal effects was unknown. Because it was unknown, it was not included in the total value of the estate. (R. 116-120). Ms. Snow goes on to say, "Appellee has never disputed this, nor has Appellant ever filed any document under oath disputing the Inventory." (Appellee's Brief at 12).

Ms. Womack has never filed any document under oath disputing the Inventory because the Inventory is correct where it states that the value of the personal property is unknown. Ms. Womack, in her Motion for Summary Judgment filed November 26, 1999, points out that there is at least some value to the personal property in that it contained crystal pieces, electronic equipment, furniture, jewelry, and oil painting and personal property. (R. 291-373).

Ms. Womack was prevented from appraising these items because they were already distributed to Ms. Snow once the dispute arose. Despite this, the trial court failed to attribute any value to these items and allowed the entire \$5,000 exempt property claim in violation of the off-setting requirements for exempt property found in section 75-2-403.

Clearly, a factual dispute remains as to the value of the personal property. Ms. Snow claims that the property has no value, undoubtedly to keep the entire \$5,000 exempt property claim erroneously awarded by the Trial Court. Ms. Womack, using common sense and the Inventory she filed with the Trial Court, maintains that the property has some value, although the exact value is unknown. Because the Trial Court decided this case on Summary Judgment, without an evidentiary hearing to determine the value of the exempt property, the Trial Court abused its discretion and committed plain error by granting summary judgment where issues of fact remained undecided. Therefore, this Court should remand the case for a determination of the value of this property.

II. DESPITE MS. SNOW'S CLAIMS, THE TRIAL COURT ERRED IN GRANTING MS. SNOW'S MOTION FOR PARTIAL SUMMARY JUDGMENT CONCERNING THE INTERPRETATION OF FIVE KEY PROVISIONS IN THE TRUST.

A. BECAUSE THE TRUST AMENDMENT DISTRIBUTES ALL OF THE DECEDENT'S ESTATE TO MS. WOMACK, THE LIFE ESTATE MERGES WITH THE REMAINDER AND MS. SNOW SHOULD RECEIVE THE ESTATE IN FEE SIMPLE.

Ms. Snow claims that "where a Trust or Will uses dispositive language limiting or defining the interest to coincide with the life of the person, or other events, and no absolute disposition is given of the complete interest in the estate or trust, Courts have routinely construed such dispositions to convey limited interests or life estates." While Ms. Snow gives no citations to support this statement, Ms. Womack agrees that this is an accurate statement of existing law. In this case, both sides agree that the decedent used language creating a life estate for Ms. Womack. However, the two sides disagree concerning the distribution of the remainder interest.

Ms. Snow contends that despite the fact that the Amendment erases the specific mention of her as a beneficiary, she is still entitled to the remainder interest under the previous trust. Not only does the Amendment eliminate any mention of Ms. Snow as a beneficiary, it grants a remainder interest to Ms. Womack creating a merger of the life estate into a fee simple as Ms. Womack is the sole remainder beneficiary.

The new language in the Amendment granting a remainder interest to Ms. Womack states, "The remainder of the trust estate shall be held in trust to provide Ruby Womack with income. Ruby shall have complete discretion in the use of the trust estate." (R. 26). Because Ms. Womack has complete discretion in the use of the trust estate to provide herself with income, she has the ability to use all of the remainder as she chooses. This creates a fee simple absolute and the life estate is merged providing the entire estate to Ms. Womack pursuant to this Amendment.

Ms. Snow claims that because the Trust Amendment does not specifically revoke the previous trust and because the Amendment is not entirely inconsistent with the trust, the trust and Amendment must be read together. While we agree that the Amendment does not specifically revoke the prior trust and that the Amendment is not entirely inconsistent with the trust, we disagree with Ms. Snow concerning certain inconsistencies between the two documents.

Ms. Snow claims that there is no inconsistency between Article VII, paragraph 1 of the trust and paragraph 1 of the Trust Amendment. (Appellee's Brief at 20). We disagree. Article VII, paragraph 1 of the trust specifically grants

Ms. Snow a remainder interest in the mobile home. (R. 17). Paragraph 1 of the Trust Amendment takes away that remainder interest and goes on to say, "The remainder of the trust estate shall be held in trust to provide Ruby Womack with income. Ruby shall have complete discretion in the use of the trust estate." (R. 26).

The above provisions are inconsistent because the Trust Amendment revokes the remainder interest for Ms. Snow by eliminating any mention of her remainder interest and granting that interest to Ms. Womack. Ms. Snow relies on the statement that the "remainder of the trust estate shall be held in trust..." to say that there is no way the decedent could have intended to leave the remainder to Ms. Womack because he would have given it outright rather than keeping it in trust. This is not necessarily true.

The Decedent intended to leave the remainder to Ms. Womack to provide her with income in her complete discretion, as stated in the Amendment. Simply because the remainder was held in trust does not mean that Ms. Snow is automatically the beneficiary because of a previous trust. By creating a trust, the Decedent obviously appreciated the value of such an instrument and recognized that keeping the

property in trust for the absolute benefit of Ms. Womack was a prudent approach.

Because the Trust Amendment is inconsistent with the original trust concerning the remainder beneficiary, the original trust is superseded by the Amendment and its provisions prevail. Therefore, Ms. Womack is the sole beneficiary and should be granted a fee simple in the Decedent's estate.

B. THE WORD "INCOME" MUST BE READ IN CONTEXT AND A DETERMINATION OF THE DECEDENT'S INTENT IS ESSENTIAL IN RESOLVING ANY AMBIGUITY OVER THIS TERM.

Ms. Snow is correct in asserting that the word income is statutorily defined in Section 22-3-4(1) as "...the return in money or property derived from the use of principal...." She is also correct in pointing out that this term is used numerous times in the trust to coincide with the above definition. However, to determine the meaning of the word "income," as used in the Trust Amendment, the word must be read in context.

When the Decedent stated, "The remainder of the trust estate shall be held in trust **to provide Ruby Womack with income,**" the word income takes on a new meaning because of

the context. The word income is modified when the words "to provide" are placed in front of it. When Ms. Snow refers to the word income throughout the trust to mean interest generated from principal, Ms. Snow never mentions a situation where the words "to provide" are placed in front of income. Common sense dictates that when a person uses the words, "to provide income," they are referring to support rather than the more technical, statutory definition of interest from principal.

Because both definitions of the word income are plausible, an ambiguity exists and extrinsic evidence should have been allowed to determine the Decedent's intent in using this word. Winegar v. Froerer Corp., 813 P.2d 104 (Utah 1991). At the very least, the Trial Court should have looked to the surrounding circumstances at the time the trust was created to assist in determining the Decedent's intent. Makoff v. Makoff, 528 P.2d 797 (Utah 1974).

Ms. Snow claims that Ms. Womack mistakenly relies on Makoff in support of the theory that extrinsic evidence should be used to determine the Decedent's intent. However, as stated by this court in Makoff v. Makoff, "...in ascertaining the intention of the settlor we may consider

the entire instrument aided by the surrounding circumstances at the time of creation of the trust." Id. at 798. In Makoff, the Court looked to surrounding circumstances to aid in interpreting the word "issue." In this case, the Trial Court failed to consider any of the surrounding circumstances in interpreting the word income.

The surrounding circumstances in this case show that the Decedent was living with Ms. Womack and providing her with income for her living expenses. This supports Ms. Womack's interpretation of the word income to mean continued financial support, not interest generated from principal in the amount of approximately \$300 per year. Ms. Snow claims that if Ms. Womack would have left all of the principal intact, the trust would have generated more income. While this is true, the income generated from this principal would still be far less than the income the Decedent was providing to the Ms. Womack before his death.

Another surrounding circumstance that the Trial Court failed to consider was the relationship between the Decedent and Ms. Snow. In the period between the execution of the original trust instrument and the Amendment, the relationship between the Decedent and Ms. Snow became very

soured and estranged. This supports the notion that when the Decedent eliminated any reference to Ms. Snow as a remainder beneficiary, Decedent intended to disinherit her based on their poor relationship.

Many decedents wish to leave the decision of whether to include others in the inheritance to a main recipient such as Ms. Womack in this case. This frees the decedent of the guilt and responsibility of specifically disinheriting someone. It also gives the recipient the opportunity to make gifts to that person if relations between the parties improve over time. This is supported by the surrounding circumstances as well as the language in the Amendment giving Ms. Womack complete discretion in the use of the trust estate.

Had the Trial Court looked to the surrounding circumstances in interpreting the word income, a far different result would have been reached and the Decedent's true intent would have been determined. Because of the Trial Court's failure to consider surrounding circumstances, this Court should remand the case for a determination of these circumstances and a judgment consistent with these requirements.

C. MS. WOMACK'S EXCEPTIONALLY BROAD POWERS UNDER THE TRUST ENTITLED HER TO MOVE THE MOBILE HOME.

Ms. Snow claims that the language in the Trust Amendment stating, "Ruby shall have complete discretion in the use of the trust estate" is merely a re-statement of section 75-7-402. However, the above provision makes no reference to this statute and no where in the statute does it give a trustee complete discretion in the use of the trust estate. Rather, the Decedent was intending to give Ms. Womack broader powers than those outlined in the statute. In fact, the Decedent gave Ms. Womack "**complete discretion** in the use of the trust estate" as expressed in the document itself.

This broad grant of authority clearly entitles Ms. Womack to move the mobile home. Even if the court determines that she is merely an income beneficiary, she is entitled to make expenditures of trust principal. Because she has complete discretion in the use of the trust estate (both income and principal), she is entitled to make such expenditures. Undoubtedly, one of the key purposes of the trust was to provide for Ms. Womack. By moving the mobile home closer to her family to support her care, Ms. Womack

has furthered the purpose of the trust.

D. DESPITE MS. WOMACK'S BENEFICIAL INTEREST IN THE TRUST, SHE IS STILL ENTITLED TO ATTORNEY'S FEES FOR PERFORMING HER DUTIES AS TRUSTEE.

Ms. Snow assumes that because there is a dispute in this case concerning beneficiaries, Ms. Womack's attorneys fees should not be paid based on Estate of Ashton v. Ashton (Ashton II), 898 P.2d 824 (Utah Ct. App.). In Ashton II, the personal representative was seeking to have her attorney's fees paid from the estate where her fees were incurred in her role as claimant as opposed to personal representative.

Ashton II can be distinguished from the case at hand because at least some of Ms. Womack's fees have been incurred in her role as trustee. Unlike Ashton II, this case involves more than a determination of heirs. This case involves several issues, including a determination of whether Ms. Womack was justified in denying Ms. Snow's exempt property claim and whether Ms. Womack was within her rights, **as trustee**, to take certain actions.

In addition to the Utah cases supporting the reimbursement of attorney's fees for counsel in administering trusts (see Appellant's Brief at 21-24),

California law provides broad support for this as well. Under California law, the trustee may use trust funds to pay for legal advice regarding trust administration and may recover attorneys fees incurred in successfully defending against claims of the beneficiaries; when the law gives these rights, the funds do not in law belong to the beneficiaries. Wells Fargo Bank v. Superior Court, 990 P.2d 591 (Cal. 2000).

Based on the above factors, at the very least the Court should remand the case for a determination of what portions of Ms. Womack's attorney's fees were based on her duties as trustee as opposed to her role as claimant.

E. THE EXPRESS LANGUAGE OF THE TRUST, INCLUDING THE BROAD AUTHORITY GRANTED TO MS. WOMACK TO USE THE TRUST ASSETS IN HER COMPLETE DISCRETION, ALLOWED MS. WOMACK TO PAY-OFF THE ENCUMBRANCE ON THE DECEDENT'S VAN.

Ms. Snow contends that the language in the trust directing the trustee to pay all expenses in administering the trust was not enough to allow Ms. Womack to pay-off the encumbrance on the van. However, Ms. Snow fails to read this provision of the trust (Article VIII, paragraph C) in connection with the Amendment stating, "Ruby shall have complete discretion in the use of the trust estate." These

two provisions read together provide Ms. Womack with the authority to pay-off the encumbrance and overcome the rule of construction against exoneration.

III. MS. SNOW'S ATTEMPTS TO EXPLAIN AWAY THE AMBIGUITIES FOUND IN THE TRUST AND AMENDMENT FAIL UNDER CLOSER ANALYSIS.

Ms. Snow's first attempt at explaining away the ambiguities in the trust and Amendment is to argue that the alternative definition of income posited by Ms. Womack is "fatally deficient." (Appellee's Brief at 38). Ms. Snow argues that simply because Ms. Womack can "imagine" a new definition for the word *income*, this does not create an ambiguity. However, as this Court determined in Makoff v. Makoff, two reasonable interpretations of the same word may create ambiguity such that surrounding circumstances should be considered in determining the decedent's intent. 528 P.2d 797 (Utah 1974) (finding ambiguity concerning the meaning of the word "issue").

In this case, where the ambiguity lies in the meaning of the word "income," Ms. Snow fails to consider the merits of Ms. Womack's position. Rather than considering the fact that Ms. Womack's definition of the word *income* is not only valid, but more consistent with the surrounding

circumstances, Ms. Snow simply blinds herself to the merits and claims that the statutory definition must prevail, despite the context or the Decedent's intent.

This appeared to be the Trial Court's approach as well. Because of this and other ambiguities, the Trial Court should have allowed extrinsic evidence or at least surrounding circumstances to determine the Decedent's intent rather than frustrating the entire purpose of the trust. This court should remand this case for a determination of the Decedent's intent rather than affirming a judgment based on only Ms. Snow's interpretation of the Decedent's intent.

Ms. Snow also argues that there is no ambiguity relating to the word "remainder." However, Ms. Snow overlooks the ambiguity that lies at the heart of this dispute. Because the Decedent eliminated Ms. Snow as a specific remainder beneficiary in the Amendment, an ambiguity arises as to who the remainder beneficiary is under the Amendment. Ms. Womack argues that because of the language granting a remainder interest to her for income with complete discretion, it is more likely that the Decedent intended her to be the beneficiary rather than the now excluded Ms. Snow.

However, there may be some ambiguity on this issue because the Decedent failed to specifically authorize a remainder interest outside of the devise to Ms. Womack. Ms. Snow's argument that the fall-back position should be to the original trust where she was a beneficiary is only one interpretation. Ms. Womack's position that the Decedent intended to make her the remainder beneficiary is also very plausible. Therefore, an ambiguity exists and extrinsic evidence or surrounding circumstances should be viewed to determine the Decedent's intent. In the Matter of the Estate of Hamilton, 869 P.2d 971 (Utah Ct. App. 1994).

Ms. Snow attempts to distinguish the case of Estate of Ashton v. Ashton (Ashton I) based on the fact that Ashton I involved an apparent ambiguity where this case involves a latent ambiguity. 804 P.2d 540 (Utah Ct. App. 1990). Regardless of whether the ambiguity is latent or apparent, the Decedent's intent and surrounding circumstances should be considered. To avoid a result that is clearly contrary to the Decedent's intent in setting up the instrument, it is crucial to look to surrounding circumstances and even extrinsic evidence when ambiguities exist. This should be the approach taken by the Court in the case at hand

concerning the ambiguous provisions.

CONCLUSION

The trial court made several mistakes of law that should be overturned by this court and the case remanded for further determinations of fact. First, the court erred in granting Ms. Snow's exempt property claim. Second, the court erred in interpreting several provisions of the trust, including the remainder interests of the parties, definition of income, trustee's discretion and ability to pay debts, as well as attorney's fees. Third, the trial court should have considered the intent of the decedent in interpreting ambiguous provisions in the trust. Based on the above factors, this court should reverse and remand this case for further proceedings and fact-finding consistent with governing law.

RESPECTFULLY SUBMITTED this 1st day of October, 2001.



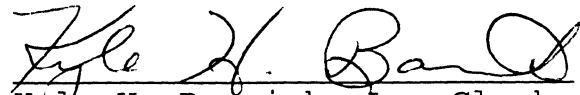
Robyn Rowe Walton, #8261
ROWE & WALTON, P.C.
915 South Main Street
Bountiful, UT 84010
Counsel for Ms. Womack

CERTIFICATE OF MAILING

I hereby certify that, on the 1st day of October, 2001, I mailed, postage paid, two (2) true and correct copies of the foregoing "REPLY BRIEF OF APPELLANT" to the following:

DENNIS M. ASTILL
MICHAEL S. LOWE
STRONG & HANNI
Sixth Floor Boston Building
9 Exchange Place
Salt Lake City, Utah 84111

Dated this 1st day of October, 2001.



Kyle H. Barrick, Law Clerk